APPEAL NO. 020011
FILED FEBRUARY 21, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on July 11, 2001. She determined that the appellant (claimant) did not prove that she sustained a repetitive trauma injury to her neck in the course and scope of employment, nor did she have disability (the inability to obtain and retain employment equivalent to her preinjury average weekly wage) due to the alleged injury.

The claimant has appealed and points out medical evidence favorable to her claim. She says that because she is in pain and has limitations on her abilities to work, she should be found to have disability. She argues that the respondent (carrier) improperly questioned her about her personal life and national origin. The carrier responds that the appeal is untimely, and that on the points of error raised in the appeal the hearing officer's decision is supported by the record.

DECISION

We affirm the hearing officer's decision.

The parties stipulated that the claimant had a "compensable injury" on _____; although not set forth as part of the stipulation, the carrier's representative stated that a wrist injury was accepted. The claimant worked as a software specialist for the employer, which included installing software on company computers and diagnosing and resolving software problems. She said she worked on a computer half of her workday. The claimant also stated that she worked on light-duty status from the date of her injury until termination of her employment on July 30 for poor performance. She initially stated that prior to the date of the termination, she was never verbally counseled or "written up" for poor performance but clarified her testimony at the end of cross-examination to say that on one occasion during May 2001, she was counseled that she had been in the bottom 10% of production the previous year. By contrast, the supervisor described contacts regarding performance issues that had been made in 2000. The claimant said she would have continued to work had her employment not been terminated.

The claimant asserted that her neck was injured due to an ergonomically incorrect workstation and that it bothered her prior to her date of injury. She also said that for about 25% of her day she would hold the telephone between her shoulder and ear, without a headset, while working on the computer. Her supervisor testified that employees had been given the option of asking for a headset in 1998, and that while he was not certain when she had received her headset, he believed it was prior to her injury.

A nerve conduction study showed no evidence of carpal tunnel syndrome or cervical radiculopathy. An MRI was reported as showing cervical spondylosis. The claimant had no medical treatment since April or May 2001. A doctor for the carrier who performed a

required medical examination testified that he believed that the claimant's neck problems were not work related in contrast to her wrist injury, even by way of aggravation, which he said was not present. There was conflicting medical opinion, with one of the claimant's doctors stating that her condition "could possibly" be related to her work.

TIMELINESS OF APPEAL

The claimant's appeal is timely; weekends and certain holidays are no longer counted as part of the 15-day time period. *See* Section 410.202(d) (effective for appeals filed after June 17, 2001).

PROPRIETY OF CROSS-EXAMINATION

Because the injury asserted was one related to computer use, the claimant was asked a limited amount of questions about whether she used her home computer, including whether she e-mailed relatives in another country. We have reviewed the record and cannot agree that these questions were asked improperly; questions relating to possible alternative causes of a claimed injury are within the scope of proper cross-examination.

THE CLAIMED CERVICAL INJURY

The hearing officer did not err in finding that the claimant did not sustain a neck injury or have disability as a result of her compensable injury of _____. The inability to obtain and retain employment equivalent to the preinjury AWW must be found by the hearing officer to result, in some respect, from the compensable injury. There was evidence to support the hearing officer's conclusion that the compensable injury did not result in diminished wages so much as the termination. Likewise, there is support for the conclusion that the compensable injury did not include even an aggravation of the cervical arthritis.

An appeals-level body is not a fact finder, and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied); American Motorists Insurance Co. v. Volentine, 867 S.W.2d 170 (Tex. App.-Beaumont 1993, no writ). The decision of the hearing officer will be set aside only if the evidence supporting the hearing officer's determination is so weak or against the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). We do not agree that this was the case here, and affirm the decision and order.

The true corporate name of the insurance carrier is **PETROLEUM CASUALTY COMPANY** and the name and address of its registered agent for service of process is

JOSEPH LALLO
4550 DACOMA STREET
HOUSTON, TEXAS 77092.

Susan M. Kelley
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Robert W. Potts
Appeals Judge